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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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GEORGE S. FULLINWIDER,

Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation, THE SOUTHERN PACIFIC COMPANY, a Corporation, THE SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation, THE IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation, THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation, THE SOUTHERN PACIFIC LAND COMPANY, a Corporation, and THE CALIFORNIA LAND & WATER COMPANY, a Corporation,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Southern District of California,

Southern Division.

Filed

SEP - 2 1915

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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GEORGE S. FULLINWIDER,

Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation, THE SOUTHERN PACIFIC COMPANY, a Corporation, THE SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation, THE IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation, THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation, THE SOUTHERN PACIFIC LAND COMPANY, a Corporation, and THE CALIFORNIA LAND & WATER COMPANY, a Corporation,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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## **Names and Addresses of Attorneys.**

For Appellant:

J. MACK LOVE, Esq., and WALTER E. BURKE, Esq., 1219 Hollingsworth Building, Los Angeles, California.

For Appellees:

HENRY T. GAGE, Esq., and W. I. GILBERT, Esq., 1204-10 Merchants National Bank Building, Los Angeles, California;

CHAS. R. LEWERS, Esq., 842 Flood Building, San Francisco, California; and

LUTHER G. BROWN, Esq., 330 Van Nuys Building, Los Angeles, California. [3\*]

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*In the United States District Court in and for the Southern District of California, Southern Division.*

No. A-103—IN EQUITY.

GEO. S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE

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\*Page-number appearing at foot of page of original certified Record.

CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE EQUITABLE TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE SOUTHERN PACIFIC LAND COMPANY, a Corporation of California; The IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California; and the CALIFORNIA LAND & WATER COMPANY, a Corporation,

Defendants.

**Citation to Defendants and Appellees.**

The United States of America,

Ninth Judicial Circuit,—ss.

To the Southern Pacific Railroad Company of California, The Southern Pacific Company, The Southern Pacific Railroad Company, The Imperial Valley Farm Lands Association, The Central Trust Company of New York, The Equitable Trust Company of New York, The Southern Pacific Land Company, The California Land & Water Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth [4] Circuit, in the City of San Francisco in said Circuit on the 22d day of June, 1915, pursuant to an appeal petitioned for by the complainant and appellant herein, and allowed by the Judge of said court and filed in the clerk's office of the District Court of the United States for the Southern District of California, Southern Division, wherein



Geo. S. Fullinwider is complainant and appellant and you and each of you are defendants and appellees, to show cause, if any there be, why the judgment and decree rendered against the said complainant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the complainant in that behalf.

The next term of said court will convene in the City of San Francisco on the 4th day of October, 1915.

WITNESS the Honorable BENJAMIN F. BLEDSOE, District Judge of the United States, at Los Angeles, California, within said Circuit, this 24th day of May, 1915, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States of America the one hundred and thirty-ninth year.

BLEDSOE,  
United States District Judge.

Now, we hereby, this 24 day of May, 1915, accept due personal service of this citation on behalf of the Southern Pacific Railroad Company, The Southern Pacific Railroad Company of California, the Southern Pacific Company, the Imperial Valley Farm Lands Association, The Southern Pacific Land Company, The Central Trust Company, and the Equitable Trust Company, appellees.

CHAS. R. LEWERS and  
W. I. GILBERT,

Attorneys for Above-named Defendants and Appellees. [5]

Now, I hereby, this 24th day of May, 1915, accept due personal service of this citation on behalf of the

California Land & Water Company, defendant and appellee.

LUTHER G. BROWN,

Attorney for Above-named Defendant and Appellee. [6]

[Endorsed]: No. A-103. United States District Court, Southern District of California, Southern Division. Geo. S. Fullinwider vs. Southern Pacific R. R. Co. et al., Citation. Filed May 24, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [7]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

No. A-103—EQUITY.

GEORGE S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation, THE SOUTHERN PACIFIC

LAND COMPANY, a Corporation of California, THE IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California, and THE CALIFORNIA LAND & WATER COMPANY, a Corporation,  
Defendants. [8]

**[Record of Enrollment.]**

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. A-103—EQ.

GEORGE S. FULLINWIDER,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,  
a Corporation, et al.,

Defendants.

On the 1st day of December, 1913, complainant filed herein his Bill of Complaint, which is hereto annexed;

On said 1st day of December, 1913, a Subpoena ad respondendum was issued, returnable as provided by law, which Subpoena is hereto annexed;

On the 22d day of December, 1913, a Motion to Strike the Bill of Complaint was filed herein by defendant Southern Pacific Railroad Company, and is hereto annexed;

On the 22d day of December, 1913, a Motion to Dismiss the Bill of Complaint was filed herein by defendant Southern Pacific Railroad Company, and is hereto annexed;

On the 23d day of November, 1914, complainant filed herein his Amended Bill of Complaint, which is hereto annexed;

On the 27th day of November, 1914, a Subpoena ad respondendum addressed to the U. S. Marshal for the Southern District of California, was issued, and is hereto annexed;

On said 27th day of November, 1914, a Subpoena ad respondendum addressed to the U. S. Marshal for the Northern District of California, was issued, and is hereto annexed;

On the 18th day of December, 1914, a Motion to Dismiss Amended Bill was filed by defendants, Southern Pacific Railroad [9] Company of California, a corporation, et al., and is hereto annexed;

On the 21st day of December, 1914, a Motion to Dismiss Amended Bill was filed herein by defendant, The California Land and Water Company, and is hereto annexed;

On the 18th day of January, 1915, a Motion to Dismiss Amended Bill of Complaint was filed herein by defendant, The Equitable Trust Company of New York, and is hereto annexed;

On the 26th day of January, 1915, a Motion to Dismiss Amended Bill of Complaint was filed herein by defendant, Central Trust Company of New York, and is hereto annexed;

On the 5th day of April, 1915, the Motions to Dismiss of the various defendants herein came on to be heard and argument was had thereon, and thereafter, on the 26th day of April, 1915, a Decree dismissing the Amended Bill of Complaint herein was signed,

filed, entered and recorded herein, and is hereto annexed. [10]

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*In the United States District Court in and for the  
Southern District of California, Southern Division.*

GEO. S. FULLINWIDER,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,  
THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation,  
SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation,  
SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation,  
Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation,  
THE EQUITABLE TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation,  
THE SOUTHERN PACIFIC LAND COMPANY, a Corporation of California,  
THE CALIFORNIA LAND AND WATER COMPANY, a Corporation of California, and  
the IMPERIAL VALLEY FARM LAND ASSOCIATION, a Corporation of California,  
Defendants.

**Amended Bill in Equity.**

To the Honorable, OLIN WELBORN and BENJAMIN F. BLEDSOE, Judges of said court, the



above-named complainant states that he is a citizen and resident of the State of California and that he complains of the defendants and for cause of action alleges:

I.

That the above-named defendant, The Southern Pacific Company is a corporation; that this complainant has not the information sufficient to state under what state or laws it is incorporated; that the defendant, The Southern Pacific Railroad Company of California is a corporation organized and existing under the laws of the State of California; that defendant, Southern Pacific Railroad Company of Arizona is a corporation organized and existing under the laws of the State of Arizona; Southern Pacific Railroad Company of New Mexico is a corporation, organized and existing under the laws of the State of New Mexico; [11] that the defendant, The Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York; that the defendant, The Equitable Trust Company of New York is a corporation organized and existing under the laws of the State of New York; that the defendant The Southern Pacific Land Company is a corporation organized and existing under the laws of the State of California; that the defendant, The California Land and Water Company is a corporation organized and existing under the laws of the State of California; that the Imperial Valley Farm Land Association is, as complainant is informed and believes, a corporation organized and existing under the laws of the State of California.

## II.

That on the 3d day of March, 1871, there was granted by the Congress of the United States to the Texas Pacific Railroad Company, every alternate odd-numbered section of public land not mineral to the amount of ten (10) sections per mile not mineral within the limits of twenty (20) miles of the line of said railroad and within the State of California and said grant and act contained the following proviso: "That all of said lands granted by this section to said company which shall not be sold or otherwise disposed of as provided by said act within three years after the completion of the entire road shall be subject to settlement and pre-emption like other lands at a price to be fixed by and paid to said company at not exceeding an average of Two and 50/100 (\$2.50) per acre for all lands herein granted."

## III.

That said act and Section 23 thereof, made a further grant of every alternate odd-numbered section of the public land not mineral to the amount of ten (10) sections per mile [12] within the State of California within the limits of twenty (20) miles of the line of said railroad to the defendant herein from a point at or near Tehachapi Pass and a point of meeting with the said Southern Pacific Railroad at or near the Colorado River and said section 23 also contained the following provision, namely, "that for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized, subject to the laws of California, to construct a

line of railroad from a point at or near Tehachepi Pass by way of Los Angeles and the Texas Pacific Railroad Company at or near the Colorado River with the same rights, grants and privileges and subject to the same limitations and restrictions and conditions as were granted to said Southern Pacific Railroad Company by the act of July 27, 1866."

## IV.

That on the 2d day of May, 1872, the Congress of the United States passed an act amendatory to the act of March 3, 1871, under which and among other things the conditions by which the grantees under the act of March 3, 1871, could mortgage said land so granted to secure the payments of bonds authorized to be issued by the grantees under said act.

## V.

That the said line of the railroad of the defendants between Tehachepi Pass and the point of meeting of the Colorado River, as aforesaid by way of Los Angeles, was completed more than ten (10) years prior to the first day of December, 1913.

## VI.

That among said lands which have not been sold or otherwise disposed of by said defendant under said grant, and as it was authorized and empowered to do by said grant and which are within ten (10) miles of the line of said railroad and within [13] the place limits of said grant in the County of Imperial; in the State of California is a tract of land described as follows, to wit: South one-half Section 5, Township 11 South, Range 14 East, San Bernardino B. and M.



## VII.

That on the 29th day of October, 1913, this complainant tendered to the defendant the sum of Eight Hundred Dollars (\$800) in gold coin of the United States, and thereupon complainant demanded of the defendants a conveyance by the defendants to the complainant of all their right, title and interest in and to the said lands, which demand was then and there refused by the said defendants to the injury and damage of this complainant. That said lands and the subject of this controversy exceed the sum of Three Thousand Dollars (\$3,000) in value. That this complainant was eligible and qualified on the first day of December, 1913, and still is, to settle upon and pre-empt public lands of the United States and was a duly qualified entryman under the Desert Land laws of the United States and was and is duly qualified to purchase said lands under said acts of Congress above referred to in amounts not to exceed Three Hundred and Twenty (320) acres.

## VIII.

That this complainant hereby now offers to pay into court the sum of Eight Hundred Dollars (\$800) to be paid to defendant or such one of the defendants as the Court may determine is entitled to said money on the execution to him of a proper conveyance to complainant of said premises.

That this action is brought, among other things, for the purpose of having the Court interpret and construe the acts of Congress hereinbefore referred to and set out in the complainant's bill. [14]

That the complainant is informed and believes it

to be true that the defendants and each and every one of them have or claim some interest in and to the subject matter of this action, the exact character or nature of which this complainant is unable to state, but he demands that whatever interest said defendants or any of them have in or to the subject matter of this complaint that they be compelled to come in court and set up that interest.

WHEREFORE your complainant prays that a construction and interpretation be made by the Court in this action of said sections of said acts of Congress and especially of Sections Nos. 9 and 23 of the said act of Congress approved March 3, 1871, together with the supplementary act passed by Congress on May 2, 1872, and all other acts of Congress that have any relation to the application and constructions of the acts of March 3, 1871, and the act amendatory thereof of May 2, 1872.

2d. That it be adjudged and ordered that the defendants upon the payment into court of the amount of Eight Hundred Dollars (\$800) as herein set out, convey to complainant all their right, title and interest in and to the lands herein described, and that said moneys so paid into court be ordered paid to defendant or defendants that the Court determines is entitled to receive the same.

3d. That the complainant have such other further and general relief as in equity and good conscience it is entitled to.

WALTER E. BURKE,  
J. MACK LOVE,

Attorneys for Complainant. [15]

State of California,  
County of Los Angeles,—ss.

Geo. S. Fullinwider, being by me first duly sworn deposes and says that he is the complainant in the foregoing action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his knowledge except as to the matters which are therein stated upon his information or belief and as to those matters, that he believes it to be true.

GEO. S. FULLINWIDER,

Subscribed and sworn to before me this 14th day of November, 1914.

[Seal] FLORENCE W. SAUNDERS,  
Notary Public in and for the County of Los Angeles,  
State of California.

It is hereby ordered that the above amended complaint be filed.

BENJAMIN F. BLEDSOE,  
Judge.

We hereby stipulate that the foregoing be filed herein as the Amended Complaint of the complainant.

Dated Nov. 21, 1914.

I. H. LEWERS and  
W. I. GILBERT,  
Attorneys for Defendants Southern Pacific Com-  
pany, The Southern Pacific Railroad Company.  
[16]

[Endorsed]: No. A. 103 Eq. United States Dis-  
trict Court, Southern District of California, South-

ern Division. George S. Fullinwider, vs. Southern Pacific Company et al. Amended Bill in Equity. Received Copy of Within Amended Bill in Equity this 18th day of November, 1914. Attorneys for Defts. Filed Nov. 23, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Walter E. Burke, J. Mack Love, Attorney, Los Angeles, Cal. New Address, 1219 Hollingsworth Bldg. [17]

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*In the United States District Court, in and for the  
Southern District of California, Southern Division.*

No. A—103.

GEORGE S. FULLINWIDER,

Complainant.

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation, SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation, SOUTHERN PACIFIC RAILROAD OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, State of New York, a Corporation, THE EQUITABLE TRUST COMPANY OF NEW YORK, State of New York, a Corporation, THE SOUTHERN PACIFIC LAND COMPANY, a Corporation, of California, THE CALI-

FORNIA LAND AND WATER COMPANY, a Corporation of California, and the IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California,  
Defendants.

**Motion to Dismiss Amended Bill in Equity.**

To the United States District Court, in and for the Southern District of California, Southern Division: Honorable OLIN WELLBORN and BENJAMIN F. BLEDSOE, Judges thereof; and to Reuben Erickson, Complainant Above Named; and to Walter E. Burke and J. Mack Love, Attorneys for Complainant:

The above-named defendants, Southern Pacific Company, a corporation, the Southern Pacific Railroad Company of California, a corporation, and the Imperial Valley Farm Lands Association, a corporation of California, now move the above-entitled Court to dismiss the above-entitled action and bill of complaint therein, upon the ground:

I.

This Court is without jurisdiction of the subject matter of said action, and is without jurisdiction to hear or determine [18] said cause on its merits.

II.

That said Bill of Complaint does not state facts sufficient to constitute a cause of action in equity, or otherwise, or at all.

Upon the hearing of said motion, defendants will rely upon the Bill of Complaint in said action and upon all the acts of Congress referred to or mentioned in said Bill of Complaint.

Dated, Los Angeles, California, Dec. 18, 1914.

CHAS. R. LEWERS,

HENRY T. GAGE,

W. I. FOLEY, and

W. I. GILBERT,

Attorneys for Said Defendants.

WM. F. HERRIN,

Counsel for Said Defendants.

[Endorsed]: Original. No. A—103. In the United States District Court, in and for the Southern District of California, Southern Division. George S. Fullinwider, Complainant, vs. Southern Pacific Company, a Corporation, et als., Defendants. Motion to Dismiss Amended Bill in Equity. Due service admitted this 18th day of Dec., 1914. Walter E. Burke, Filed Dec. 18, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Henry T. Gage and W. I. Gilbert, 1204-10 Mer. Natl. Bank Bldg., Attorneys for Defendants. [19]

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*In the District Court of the United States, Southern District of California, Southern Division.*

No. A-103—IN EQUITY.

GEORGE S. FULLINWIDER,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,  
SOUTHERN PACIFIC RAILROAD  
COMPANY OF CALIFORNIA, a Corporation,  
SOUTHERN PACIFIC RAILROAD  
COMPANY OF ARIZONA, a Corporation,



SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation, SOUTHERN PACIFIC LAND COMPANY, a Corporation, CALIFORNIA LAND AND WATER COMPANY, a Corporation, and the IMPERIAL FARM LAND ASSOCIATION, a Corporation,

Defendants.

**Decree.**

This cause having come on to be heard at this term on the 5th day of April, 1915, on the motions of the defendants to dismiss the amended bill of complaint, and having been argued by counsel for the respective parties at said time, and the Court having at said time ordered that said motions to dismiss be sustained without leave to amend;

Now, therefore, it is hereby ordered and decreed that said amended bill of complaint be and the same is hereby finally dismissed, and judgment is hereby given the said defendants for their costs in this suit in the sum of Thirty-four 40/100 (34.40) Dollars.

Dated April 26, 1915.

BENJAMIN F. BLEDSOE,

District Judge.

Decree Entered and Recorded April 26, 1915,

Attest: WM. M. VAN DYKE,

Clerk.

By T. F. Green,

Deputy Clerk. [20]

[Endorsed]: No. A—103. In the District Court of the United States, Southern District of California, Southern Division. George S. Fullinwider, Plaintiff. vs. Southern Pacific Company, a Corporation, et al., Defendants. Decree. Filed Apr. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Charles R. Lewers, Attorney for Defendants, 828 Flood Building, San Francisco, Cal. [21]

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*In the United States District Court, in and for the  
Southern District of California, Southern Division.*

No. A-103—IN EQUITY.

GEO. S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE EQUITABLE TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE SOUTHERN PACIFIC LAND COMPANY, a Corporation of California; THE



IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation; and the CALIFORNIA LAND & WATER COMPANY, a Corporation,

Defendants.

**Assignment of Errors.**

And now comes the complainant, Geo. S. Fullinwider, and says that in the record and proceedings of said court in the above-entitled cause and in the final decree made and entered therein on the 26th day of April, 1915, there is manifest error and for error the said complainant assigns the following:

1. The Court erred in sustaining the motion to dismiss of the defendants, The Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company, The Southern Pacific Company and the Imperial Valley Farm Lands Association to the amended bill of the complainant and directing that said amended bill be dismissed for want of equity in said amended bill.

2. The Court erred in sustaining the motion to dismiss of the defendant, the Central Trust Company, to the amended bill of the [22] complainant and directing that said amended bill be dismissed for want of equity in said amended bill.

3. The Court erred in sustaining the motion to dismiss of the defendant, the Equitable Trust Company, to the amended bill of the complainant and directing that said amended bill be dismissed for want of equity in said amended bill.

4. The Court erred in sustaining the motion to dismiss of the defendant, the Southern Pacific Land

Company, to the amended bill of the complainant and directing that said amended bill be dismissed for want of equity in said amended bill.

5. The Court erred in sustaining the motion to dismiss of the defendant, the California Land & Water Company, to the amended bill of the complainant, and directing that said amended bill be dismissed for want of equity in said amended bill.

6. The Court erred in sustaining the motion of the defendants, the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company, the Southern Pacific Company, and the Imperial Valley Farm Lands Association, to dismiss on the ground that the Court was without jurisdiction of the subject matter of said action and was without jurisdiction to hear and determine said cause on its merits.

7. The Court erred in sustaining the motion of the defendant, the Central Trust Company, to dismiss on the ground that the Court was without jurisdiction of the subject matter of said action and was without jurisdiction to hear and determine said cause on its merits.

8. The Court erred in sustaining the motion of the defendant, the Equitable Trust Company, to dismiss on the ground that the Court was without jurisdiction of the subject matter of said action and was without jurisdiction to hear and determine said cause on its merits. [23]

9. The Court erred in sustaining the motion of the defendant, the Southern Pacific Land Company, to dismiss on the ground that the Court was without

jurisdiction of the subject matter of said action and was without jurisdiction to hear and determine said cause on its merits.

10. The Court erred in sustaining the motion of the defendant, the California Land & Water Company, to dismiss on the ground that the Court was without jurisdiction of the subject matter of said action and was without jurisdiction to hear and determine said cause on its merits.

11. The Court erred in not overruling the defendants, the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company, The Southern Pacific Company, and the Imperial Valley Farm Lands Association's motion to dismiss and requiring the said defendants and each of them to answer or plead to said amended bill.

12. The Court erred in not overruling the defendant, the Central Trust Company's motion to dismiss and requiring the said defendant to answer or plead to said amended bill.

13. The Court erred in not overruling the defendant, the Equitable Trust Company's motion to dismiss and requiring the said defendant to answer or plead to said amended bill.

14. The Court erred in not overruling the defendant, the Southern Pacific Land Company's motion to dismiss and requiring the said defendant to answer or plead to said amended bill.

15. The Court erred in not overruling the defendant, the California Land & Water Company's motion to dismiss and requiring the said defendant to answer or plead to said amended bill.

16. The Court erred in that it did not hold that the amended bill of complaint of the complainant stated a good cause of action to which the defendants and each of them should be required to file their answer or plea.

17. The Court erred in entering a decree in favor of the [24] defendants, dismissing the complainant's amended bill and entering judgment against complainant in favor of the defendants for their cost and disbursements herein.

18. The Court erred in not granting to said complainant the relief prayed for by him in his said amended bill.

19. The Court erred in not granting to said complainant any equitable relief.

(a) As said amended bill contains allegations and matters entitling said complainant to equitable relief.

(b) Said amended bill contains allegations and matters entitling the said complainant to the relief prayed for in said amended bill.

20. The Court erred in holding that the complainant was not entitled to the relief prayed for by him in his said amended bill.

21. The Court erred in not holding that the proviso in Section 9 of the act of Congress of March 3, 1871, was a conditional limitation. Said proviso in Section 9 of said act is as follows:

“That all such lands, so granted by this section to said company, which shall not be sold or otherwise disposed of, as provided in this act, within three years after the completion of the entire road, shall be subject to settlement and

pre-emption like other lands, at a price to be fixed by and paid to said company, not exceeding an average of two dollars and fifty cents per acre for all the lands herein granted."

22. The Court erred in not holding that the said proviso copied in assignment No. 21 was a conditional limitation.

That the happening of the conditions subsequent therein specified entitled the complainant herein to a specific performance of said contract upon the payment to the defendants of the amount of \$2.50 per acre.

23. The Court erred in holding that there was not jurisdiction in the Court on the equity side to enforce a specific performance of said contract on behalf of the complainant upon the happening of the conditions subsequent in said proviso of [25] Section 9 of said act of Congress of March 3, 1871.

24. The Court erred in not holding that the proviso in Section 9 of the act of March 3, 1871, providing "that said lands not sold or otherwise disposed of within three years after the completion of the entire road should be subject to settlement and pre-emption like other lands," was sufficiently definite to be enforced as a conditional limitation.

25. The Court erred in not holding that the proviso in Section 9 of the act of March 3, 1871, was a binding contract upon the defendants and each of them, by which they and each of them were obligated to convey all interest they had in said land described in complainant's amended bill, upon the payment by the complainant to them or to whichever one of the



defendants the Court should direct the same should be paid to, or \$2.50 per acre.

26. The Court erred in not holding that this suit can be maintained by complainant as one to enforce a specific performance of said contract or proviso.

-(a) The defendants hold the legal title to and the possession of the said granted lands.

(b) Complainant having asked for specific performance equitable relief may and can be granted him by specific performance.

27. The Court erred in not holding that the provisions of said act of March 3, 1871, making said land grants, wherein it was provided "that all lands not sold or otherwise disposed of within three years after the completion of the entire road should be subject to settlement and pre-emption like other lands, etc." were both positive and negative, requiring the grantees and especially these defendants and each of them to sell to this complainant and to settlers who should apply to buy and who were eligible to settle upon or pre-empt public lands, at a price not greater than an average of \$2.50 per acre, and requiring said [26] defendants to refrain from selling any of the granted lands to other than persons eligible to settle and pre-empt public lands, in such quantities as is provided by law for the disposition of public lands and at a price not greater than an average of \$2.50 per acre.

28. The Court erred in holding that the defendant, the Southern Pacific Railroad Company of California, and each and every of the other defendants claiming an interest in said lands or the defendants

claiming by, through or under it, took said grant *only* "with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company by the act of July 27, 1866.

29. The Court erred in not holding that the proviso in Section 9 of the act of March 3, 1871, applied to and was binding upon the defendants and every one of them.

30. The Court erred in holding that the proviso in Section 9 of the act of March 3, 1871, was not binding upon the defendants and every one of them.

31. The Court erred in not holding that the proviso in Section 9 of the act of March 3, 1871, was designed to devote said lands conveyed by said grants "that had not been sold or otherwise disposed of by the defendants within three years after the completion of the entire road," to settlement and to prevent the monopoly of said lands. That said grant was a law as well as a grant, that said defendants could not defeat the purpose of the proviso requiring sales to settlers and pre-emptors, by themselves monopolizing and holding the lands and by refusing to sell at all or by refusing to sell any of them except to such persons and in such quantities and at such prices as they or either of them saw fit.

32. The Court erred in holding that the proviso in Section 9 of the act of Congress of March 3, 1871, was not a conditional [27] limitation, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the defendants or either of them to accept

and become vested with the title to the lands under the grant of March 3, 1871.

33. The Court erred in not holding that the proviso in Section 9 of said act of Congress of March 3, 1871, was and is a conditional limitation, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the Southern Pacific Railroad Company of California and the other defendants claiming an interest in said lands or claiming by, through or under said Southern Pacific Railroad Company of California, to accept and become vested with the title to the lands under the grant of 1871.

34. The Court erred in refusing to enter a decree of specific performance on behalf of Geo. S. Fullinwider, the complainant herein, and against the defendants, the Southern Pacific Railroad Company of California and each and every one of the other defendants claiming an interest in said lands or claiming by, through or under it, requiring said defendants to convey to the complainant the lands sought to be purchased by him, upon payment to them of the purchase price therefor, or \$2.50 per acre.

35. The Court erred in holding that Congress did not intend, by the proviso in Section 9 of the act of March 3, 1871, to give to settlers and pre-emptors the right to compel the Southern Pacific Railroad Company of California and the other defendants claiming an interest in said lands, to sell to them the lands embraced within said grant, according to the terms of the proviso in said act of March 3, 1871.

36. The Court erred in not holding that the de-



defendant, the Southern Pacific Railroad Company of California, and the other defendants claiming an interest in said lands or claiming by, through or under it, be required to convey said lands to the [28] complainant applying to purchase the same and tendering to them \$2.50 per acre in payment therefor.

37. The Court erred in refusing to direct and decree a specific performance on behalf of the complainant against the defendant, the Southern Pacific Railroad Company of California, and the other defendants claiming an interest in said lands or claiming by, through or under it, requiring said defendants to convey to said complainant the lands sought to be purchased by said complaint as prayed for in his amended bill.

38. The Court erred in holding that the proviso in said grant did not constitute a contract entered into by and between the defendant, the Southern Pacific Railroad Company of California and the Government, for the benefit of and enforceable by, the complainant.

39. The Court erred in holding that the proviso in Section 9 of the Act of March 3, 1871, providing "that said lands should be subject to settlement and pre-emption like other lands, that were not sold or otherwise disposed of by the defendants within three years after the completion of the entire road," was not a conditional limitation for the use and benefit of this complainant and those who in good faith, being eligible to make settlement and pre-empt public lands, who should apply to make settlement upon said lands and to purchase the same in quantities

and at the price provided by said act.

40. The Court erred in holding that the defendants, by the provisions of said grant contained, did not take in all lands still held by them under said grant which had not been sold or otherwise disposed of as provided, etc., a conditional limitation estate therein for the use and benefit of the complainant.

(a) The nature and quality of said interest in said grant are sufficiently specific and definite.

(b) The application to purchase, and tender of payment [29] and being eligible to make settlement and pre-emption on public lands is a sufficient identification.

41. The Court erred in not holding that the offer and tender of the complainant to purchase the lands described by him in his amended bill of complaint, from the defendant, the Southern Pacific Railroad Company of California and the other defendants claiming an interest in said lands or claiming by, through or under it, gave to the complainant a vested right in said lands in default of acceptance of such offer and a conveyance to him by the defendants.

42. The Court erred in not holding that the proviso in the Act of March 3, 1871, is sufficiently definite and certain to be enforced as a conditional limitation.

43. The Court erred in holding that the proviso in the act of March 3, 1871, providing "that said lands should be subject to settlement and pre-emption like other lands," was not sufficiently definite and certain as a conditional limitation and that it is not sufficiently definite and certain to be specifically enforced as a conditional limitation for the use

and benefit of the complainant.

44. The Court erred in not holding that the proviso in the act of March 3, 1871, providing "that said lands under certain conditions, should be subject to settlement and pre-emption like other lands," was intended by Congress as a conditional limitation for the use and benefit of the complainant and such other settlers as brought themselves within said proviso.

45. The Court erred in not holding that the proviso in the act of March 3, 1871, was a conditional limitation, impressed upon and running with the title to the land until the title should have ultimately become vested in a settler upon the terms and under the conditions provided in said grant.

46. In case the Court should have been of the opinion [30] that said conditions did not create a conditional limitation estate, then the Court erred in not holding that the defendant, the Southern Pacific Railroad Company of California and each and every of the defendants claiming an interest in said lands or claiming an interest, by, through or under it, took the titles to said lands in trust for this complainant and other settlers eligible to settle and pre-empt public lands and who brought themselves within the provisions of said act and upon said complainant or any other such settlers paying to the said defendant or defendants, the \$2.50 per acre, they would be compelled to convey said lands to the complainant or such settlers.

47. The Court erred in holding that this complainant was not such a settler as was contemplated

by the act of March 3, 1871.

48. The Court erred in holding that the complainant did not have a vested interest in the land sought to be purchased by him, by reason of his offer and tender to purchase the land upon the terms provided in the act of March 3, 1871.

49. The Court erred in not holding that Geo. S. Fullinwider, the complainant herein, was entitled to the relief prayed for in his amended bill herein or to any relief, and in holding that said amended bill of complainant should be dismissed.

50. The Court erred in not holding that the defendants, The Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company, The Southern Pacific Company, the Imperial Valley Farm Lands Association, the Central Trust Company, The Equitable Trust Company, the Southern Pacific Land Company and the California Land & Water Company, individually and collectively, any or either of them, had violated the provisions of said act of Congress of March 3, 1871, relative to settlement and pre-emption of said lands by denying complainant's right under said act.

51. The Court erred in not holding that the defendants, [31] The Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company, the Southern Pacific Company, the Imperial Valley Farm Lands Association, the Central Trust Company, The Equitable Trust Company, the Southern Pacific Land Company and the California Land & Water Company, or any or either of them had failed and refused and omitted to deal with

the said lands or any part thereof in breach of said act of Congress and had thereby defeated the settled policy and intent of Congress in the premises.

52. The Court erred in not holding that said proviso in Section 9 of the act of March 3, 1871, is enforceable by the complainant.

53. The Court erred in not holding that it was impossible for the defendants, the Southern Pacific Railroad Company of California, the Southern Pacific Railroad Company, the Southern Pacific Company, the Imperial Valley Farm Lands Association, the Central Trust Company, the Equitable Trust Company, The Southern Pacific Land Company and the California Land & Water Company, or any or either of them, to receive said grant with the same "rights, grants and privileges" as those contained in the act of July 27, 1866, for the reason that the time within which they were required to perform the conditions of sections 8 or 12 of said act were not extended.

53½. The Court erred in holding that under Section 23 of the act of March 3, 1871, the Southern Pacific took said grant under the act of July 27, 1866.

(a) That said act of July 27, 1866 is not sufficiently designated by said section in order for the Court to determine just what act of 1866 was referred to.

(b) That the reference of Section 23 of said act of March 3, 1871, to the act of 1866 is too indefinite and uncertain.

54. The Court erred in holding that the defendants, the Southern Pacific Railroad Company of Cali-



fornia, the Southern Pacific Railroad Company, the Southern Pacific Company, the Imperial Valley Farm Lands Association, the Central Trust Company, the Equitable Trust Company, the Southern Pacific Land Company and the [32] California Land & Water Company, individually or collectively, or any or either of them, were not bound by all of the terms and conditions or the whole of the act of Congress of March 3, 1871.

55. The Court erred in not holding that the defendants, the Southern Pacific Railroad Company of California, the Southern *Southern* Pacific Railroad Company, the Southern Pacific Company, The Imperial Valley Lands Association, the Central Trust Company, The Equitable Trust Company, the Southern Pacific Land Company, and the California Land & Water Company, individually or collectively, or any or either of them, took said grant with all the "rights, grants and privileges, and subject to all of the limitations, restrictions and conditions" of the act of March 3, 1871, as well as any limitations, restrictions and conditions contained in the act of July 27, 1866.

56. The Court erred in not holding that the proviso in respect to the settlement and pre-emption of said lands, as provided in said act of March 3, 1871, was a question in the case requiring judicial interpretation, construction and determination.

57. The Court erred in not holding that there was jurisdiction in the court on the equity side of the subject matter of this suit.

58. The Court erred in not holding that there was

jurisdiction in the court on the equity side to enforce a specific performance for a breach of the condition in said proviso of said act of March 3, 1871.

59. The Court erred in not holding that there was jurisdiction in the court on the equity side to enforce a specific performance for a breach of an assumed conditional limitation in the proviso of said act of March 3, 1871.

60. The Court erred in not holding that the complainant, being eligible to make settlement and pre-empt public lands, had a right to enforce specific performance of contract from the defendants, The Southern Pacific Railroad Company of California or any of the defendants claiming an interest in it, or claiming by, through or under it, upon payment to them of \$2.50 per acre. [33]

61. The Court erred in sustaining the motion to dismiss of the defendants, the Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company, The Southern Pacific Company, the Imperial Valley Farm Lands Association, The Central Trust Company, the Equitable Trust Company, The Southern Pacific Land Company and the California Land & Water Company, and directing a decree dismissing the complainant's amended bill, together with their costs.

62. The Court erred in holding that the said proviso of said act of March 3, 1871, or any act amendatory thereof touching settlement and pre-emption of said land as therein provided, in anywise or at all, did not refer to and affect the title to the said lands or any part thereof.

63. The Court erred in holding that the primary and controlling object of Congress of the act of March 3, 1871, and any acts amendatory thereof, was not to provide for the sale of the granted lands to citizens eligible to make settlement and pre-emption as provided in said act.

64. The Court erred in holding that the proviso for the sale of the lands granted to citizens eligible to make settlement and pre-emption upon public lands, etc., as contained in the act of March 3, 1871, and the acts amendatory thereof, were not binding laws and contracts upon the defendants and each and all of them.

65. The Court erred in not holding that the defendant, the Southern Pacific Railroad Company of California, and its successors in interest, and the defendants, the Southern Pacific Railroad Company, The Southern Pacific Company, the Imperial Valley Farm Lands Association, The Central Trust Company, The Equitable Trust Company, The Southern Pacific Land Company and the California Land & Water Company, and any or either of them, under said land grant of the act of March 3, 1871, in any event, were required to sell all the lands not otherwise sold or disposed of within three years after the completion of the entire road, etc., to citizens [34] eligible to make settlement and pre-emption of public lands.

66. The Court erred in not holding that the proviso in the act of March 3, 1871, and the acts amendatory thereof were operative and enforceable laws and contracts and required the defendants to sell said



lands to persons only eligible to make settlement and pre-emption in such quantities as is provided by law for the distribution of the public land and at a price not to exceed an average of \$2.50 per acre, and that it prohibited them or either or any of them as to all lands remaining unsold three years after the completion of the entire road, to sell to persons other than those eligible to make settlement and pre-emption upon public lands.

67. The Court erred in not holding that Congress had waived all of the preliminary steps necessary for actual settlers to take in order to acquire a right in the public domain except that of paying to the defendants the purchase price for said land not to exceed an average of \$2.50 per acre.

68. The Court erred in not holding that the defendant, the Southern Pacific Railroad Company of California, and the other defendants claiming an interest in said lands or claiming by, through or under it, had violated the law and every contract they had entered into when they accepted said grant under the act of March 3, 1871, by refusing to accept the tender made to them by complainant, and conveying to him the land described in his amended bill.

69. The Court erred in not holding that the defendant, the Southern Pacific Railroad Company of California, and the other defendants claiming an interest in said land or claiming by, through or under it, had violated said law and contract which they entered into when they accepted said grant under the act of March 3, 1871, and had thereby defeated the primary object, purpose, intent, and settled policy

of Congress in regard to public lands involved in these land grants and especially in this one. [35]

70. The Court erred in not holding that the defendant, the Southern Pacific Railroad Company of California, and the defendants claiming an interest in said lands so granted or any of the defendants claiming by, through or under it, had waived their right to fix a price upon said lands other than an average of \$2.50 per acre and should be compelled to convey the same upon payment to them of the maximum price of \$2.50 per acre by this complainant.

71. The Court erred in not holding that Congress has the absolute control over the settlement, sale and distribution of the public lands and that it has the power to waive any and all of the preliminary steps that might be required to be taken to initiate on the part of a settler or pre-emptor, a vested right to public lands, and that it did, under the terms and conditions of the act of March 3, 1871, waive all of the preliminary steps and conditions required of settlers and pre-emptors to be done, except that they must be eligible to take public lands and must pay the defendants the purchase price, and that upon the happening of these two conditions, the equitable title to the land became vested in the complainant or settler.

72. The Court erred in sustaining the defendants and each of their motions to dismiss and directing that the complainant's bill be dismissed without leave to amend.

73. The Court erred in sustaining the defendants and each of their motions to dismiss the complainant's bill and in not directing that said complainant

be permitted to amend his bill within a time fixed by the Court, or that the same should be dismissed.

WHEREFORE, the complainant prays that the said decree be reversed.

J. MACK LOVE,

Attorney for Complainant and Appellant.

738 H. W. Hellman Bldg., Los Angeles, California.

[36]

[Endorsed]: No. A-103. United States District Court, Southern District of California, Southern Division. Geo. S. Fullinwider vs. Southern Pacific, et al. Assignment of Errors. Filed May 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. J. Mack Love, Attorney at Law, 738-739 H. W. Hellman Building, Los Angeles, Telephone F. 5021, Attorney for Complainant. [37]

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*In the United States District Court, in and for the  
Southern District of California, Southern Division.*

No. A-103—IN EQUITY.

GEO. S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO,

a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE EQUITABLE TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE SOUTHERN PACIFIC LAND COMPANY, a Corporation of California; THE CALIFORNIA LAND & WATER COMPANY, a Corporation of California, and the IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California,  
Defendants.

### **Petition for Appeal.**

The above-named complainant, conceiving himself aggrieved by the decree made and entered on the 26th day of April, 1915, in the above-entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

J. MACK LOVE,  
Attorney for Complainant and Appellant,  
738 H. W. Hellman Bldg., Los Angeles, California. [38]

Los Angeles, California, May 16, 1915.  
And now, to wit, on the 16th day of May, 1915, it is

ordered that the above and foregoing appeal be allowed as prayed for.

BLEDSON,  
United States District Judge.

[Endorsed]: No. A-103. United States District Court, Southern District of California, Southern Division. Geo. S. Fullinwider vs. Southern Pacific, et al. Petition for Appeal. Filed May 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. J. Mack Love, Attorney at Law, 738-739 H. W. Hellman Building, Los Angeles, Telephone F 5021, Attorney for Complainant. Eq. O. B. [39]

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*In the District Court of the United States in and for  
the Southern District of California, Southern  
Division.*

GEO. S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE EQUITABLE



TRUST COMPANY OF NEW YORK,  
STATE OF NEW YORK, a Corporation;  
THE SOUTHERN PACIFIC LAND COM-  
PANY, a Corporation of California; THE  
IMPERIAL VALLEY FARM LANDS AS-  
SOCIATION, a Corporation of California;  
and THE CALIFORNIA LAND & WATER  
COMPANY, a Corporation,

Defendants.

**Undertaking for Costs on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Geo. S. Fullinwider, as Principal, and  
National Surety Company, as Surety, are held and  
firmly bound to the above-named defendants in the  
sum of Two Hundred Fifty (\$250) Dollars, lawful  
money of the United States, well and truly to be paid.

THE CONDITION of the above obligation is such  
that,

WHEREAS, the said Geo. S. Fullinwider has ap-  
pealed to the United States Circuit Court of Appeals  
from the judgment and order of the Court entered  
in this case on the 5th day of April, 1915, dismissing  
his case; [40]

NOW, THEREFORE, if the said Geo. S. Fullin-  
wider pays all costs and damages that may accrue  
and be taxed against him on said appeal, not exceed-  
ing Two Hundred Fifty (\$250) Dollars, in favor of  
the defendants, then this obligation to be void, other-  
wise to be and remain in full force and effect.

SEALED AND DATED at Los Angeles, Cali-



fornia, this 21st day of May, 1915.

GEORGE S. FULLINWIDER.

By J. MACK LOVE,

His Atty.

NATIONAL SURETY COMPANY.

Per CHAS. SEYLER, Jr., (Seal)

Attorney in Fact.

State of California,

County of Los Angeles,—ss.

On this 21st day of May, A. D. 1915, before me, Hazel Jones, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Chas. Seyler, Jr., known to me to be the person whose name is subscribed to the within instrument, as the Attorney in Fact of National Surety Co. and acknowledged to me that he subscribed the name of National Surety Co. thereto as surety, and his own name as Attorney in Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

HAZEL JONES,

Notary Public in and for said County and State.

[41]

[Endorsed]: A 103 Eq. Geo. S. Fullinwider, Plaintiff, vs. Southern Pacific R. R. Company et al., Defendants. Cost Bond. Filed May 24, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk.

This bond approved this 22d day of May, 1915.

BLED SOE,

Judge U. S. District Judge. [42]

*In the United States District Court in and for the  
Southern District of California, Southern Di-  
vision.*

No. A-103—IN EQUITY.

GEO. S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Cor-  
poration; THE SOUTHERN PACIFIC  
RAILROAD COMPANY OF CALI-  
FORNIA, a Corporation; THE SOUTHERN  
PACIFIC RAILROAD COMPANY OF  
ARIZONA, a Corporation; THE SOUTH-  
ERN PACIFIC RAILROAD COMPANY  
OF NEW MEXICO, a Corporation, Consoli-  
dated; THE CENTRAL TRUST COM-  
PANY OF NEW YORK, STATE OF NEW  
YORK, THE EQUITABLE TRUST COM-  
PANY OF NEW YORK, STATE OF NEW  
YORK, a Corporation; THE CALIFORNIA  
LAND & WATER COMPANY, a Corpora-  
tion; THE SOUTHERN PACIFIC LAND  
COMPANY, a Corporation of California, and  
THE IMPERIAL VALLEY FARM LANDS  
ASSOCIATION, a Corporation of California,  
Defendants.

**Praeipie [for Transcript of Record].**

To the Clerk of Said Court:

Sir: Please make a transcript of the following  
papers and records in this case for the Circuit Court  
of Appeals:

A copy of the amended petition with the date of its filing; a copy of the motion to dismiss filed by the defendants, the Southern Pacific Railroad Company of California, a Corporation, The Southern Pacific Company and the Imperial Farm Lands Association, a Corporation of California, together with the date of its filing; a memorandum that the other defendants filed a similar motion and the date when all of said motions were filed; a copy of all of the appeal papers, including the petition for an appeal, together with the Judge's order granting the appeal, the praecipe for the transcript, the citation, the cost bond for appealing and the decree of the Court entered in this case, showing the dates on all of the [43] papers when filed, and the date when the decree was entered, omitting the caption from all of the papers except the amended petition.

J. MACK LOVE,

Attorney for Complainant and Appellant.

We hereby acknowledge service of a copy of the within and foregoing praecipe upon us, as attorneys for the undersigned defendants this 24 day of May, 1915.

CHAS. R. LEWERS and

W. I. GILBERT,

Attorneys for The Southern Pacific Railroad Company of California, The Southern Pacific Railroad Company, The Southern Pacific Co., The Southern Pacific Land Company, The Imperial Valley Farm Lands Association, The Central Trust Company and The Equitable Trust Company.

I hereby acknowledge service of a copy of the within and foregoing praecipe upon me, as attorney for the defendant, the California Land & Water Company, this 24th day of May, 1915.

LUTHER G. BROWN,

Attorney for the California Land & Water Company.

[Endorsed]: No. A-103. United States District Court, Southern District of California, Southern Division. Geo. S. Fullinwider, vs. Southern Pacific Company et al. Praecipe. Filed May 24, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. J. Mack Love, Attorney at Law, 738, 739 H. W. Hellman Building, Los Angeles. Telephone F 5021, Attorney for Complainant. [44]

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**[Certificate of Clerk U. S. District Court to  
Transcript of Record.]**

*In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division.*

No. A-103—EQUITY.

GEORGE S. FULLINWIDER,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTH-

ERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation; THE EQUITABYE TRUST COMPANY OF NEW YORK, a Corporation; THE SOUTHERN PACIFIC LAND COMPANY, a Corporation of California; THE IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California, and THE CALIFORNIA LAND & WATER COMPANY, a Corporation,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States, in and for the Southern District of California, do hereby certify the foregoing forty-four (44) typewritten pages, numbered from 1 to 44 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Record of Enrollment, Citation on Appeal, Amended Bill of Complaint, Motion [45] to Dismiss, filed by defendants, the Southern Pacific Railroad Company of California, a Corporation, The Southern Pacific Company and The Imperial Valley Farm Lands Association, a corporation of California, Decree, Assignments of Error, Petition for and Order Allowing Appeal, Bond on Appeal, and Praecipe for Transcript of Record on Appeal, in the above and therein entitled cause, and that the same constitute the record in said cause as specified in the said Praecipe for Transcript on Appeal, filed in my office on behalf of the appellant by his solicitor of record;

I do further certify that the cost of the foregoing record is \$21.60/100, the amount whereof has been paid me by George S. Fullinwider, the appellant in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 10th day of August, in the year of our Lord one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,  
Clerk of the District Court of the United States, in  
and for the Southern District of California.

By Chas. N. Williams,  
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled  
8/10/15. C. N. W.] [46]

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[Endorsed]: No. 2638. United States Circuit Court of Appeals for the Ninth Circuit. George S. Fullinwider, Appellant, vs. The Southern Pacific Railroad Company of California, a Corporation, The Southern Pacific Company, a Corporation, The Southern Pacific Railroad Company, a Corporation, The Imperial Valley Farm Lands Association, a Corporation, The Central Trust Company of New York, a Corporation, The Equitable Trust Company of New York, a Corporation, The Southern Pacific Land Company, a Corporation and the California Land & Water Company, a Corporation, Appellees.



Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed August 20, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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**[Order Allowing Appellant 60 Days' Additional  
Time to File Transcript on Appeal.]**

*In the United States Circuit Court of Appeals, Ninth  
Judicial Circuit.*

GEO. S. FULLINWIDER,

Complainant and Appellant,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF ARIZONA, a Corporation; THE SOUTHERN PACIFIC RAILROAD COMPANY OF NEW MEXICO, a Corporation, Consolidated; THE CENTRAL TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE EQUITABLE TRUST COMPANY OF NEW YORK, STATE OF NEW YORK, a Corporation; THE SOUTHERN PACIFIC LAND COM-

PANY, a Corporation of California; THE CALIFORNIA LAND & WATER COMPANY, a Corporation of California, and THE IMPERIAL VALLEY FARM LANDS ASSOCIATION, a Corporation of California,  
Defendants and Appellees.

Good cause appearing therefor, it is hereby ordered that the appellant, Geo. S. Fullinwider, have sixty (60) days additional and further time within which to file his Transcript on appeal in the above-entitled suit, with the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit.

Dated at Los Angeles, June 17th, 1915.

BLEDSON, J.,

United States District Judge.

[Endorsed]: No. 2638. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time 60 Days' Additional Time to File Record Thereof and to Docket Case. Filed Aug. 20, 1915. F. D. Monckton, Clerk.